

REMARKS

Claims 33-40 were presented for examination and were pending in this application. In an Office action dated February 8, 2005, claims 33-40 were rejected. Applicant thanks Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicant herein amends claims 33, 35, 37 and 39. Claims 34, 36, 38 and 40 are canceled. These changes are believed not to introduce new matter, and their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that Examiner reconsider all outstanding objections and rejections and withdraw them.

Response to Rejections Under 35 USC 103(a)

In the third paragraph of the Office Action, Examiner rejected pending claims 33-40 under 35 U.S.C §103(a) as allegedly being unpatentable over U.S. Patent No. 6,393,480 B1 to Qin et al. ("Qin") in view of U.S. Patent No. 6,519,636 B2 to Engel et al. ("Engel"). This rejection is respectfully traversed.

Amended claim 33 recites a method of predicting the performance of an application in a multi-hop network, the multi-hop network comprising a client and a server and having a network path, the method comprising:

determining a set of network flow factors..., the network flow factors comprising a number of turns added per direction..., wherein said determining... comprises generating a histogram of node send time and determining the number of turns added per direction based on the histogram;

... (emphasis added)

Thus, claim 33 recites a method of predicting an application's performance in a multi-hop network based on, *inter alia*, generating a histogram of node send time. Qin discloses a "method... for application response time prediction [that] provides an estimate of application performance in a second network given performance characteristics of the application in a first network." (Qin, Abstract). The Qin invention "determines predicted response time by performing an analysis of the application's performance on a LAN (local area network), and by combining this information with particular characteristics of the WAN (wide area network) on which the application will be deployed." (Qin, Summary of the Invention). However, Qin does not disclose generating a histogram of node send time. On Page 4 of the Office action, Examiner refers to Fig. 3, item 306 of Qin as disclosing this element. However, the explicit disclosure in Qin regularly notes that in "FIG. 3, there is shown an example of event traces illustrating response prediction for a simple application." This concept differs fundamentally from that of a histogram, which is a graph showing a frequency density or distribution. Thus, Qin does not disclose this claimed element.

Engel does not remedy the shortcomings of Qin. Engel discloses a computer comprising rule sets, connected to one or more networks and used to classify, manipulate and/ or control communications. (Engel, Abstract). However, Engel, like Qin, fails to disclose generating a histogram of node send time. A careful reading of Engel clearly shows that this element is missing, and that there is no teaching or suggestion of such feature. Thus, Applicant respectfully submits that amended claim 33 is patentably distinguishable over the cited references, and Applicant respectfully requests that Examiner reconsider the rejection and withdraw it.

Amended claims 35, 37 and 39 recite apparatuses and a computer readable medium having the same or similar elements; thus, the arguments advanced above are applicable to these claims and are herein incorporated by reference. Applicant respectfully requests that Examiner withdraw the rejections of these claims as well.

Conclusion

In summary, Applicant respectfully submits that claims 33, 35, 37 and 39 are patentably distinguishable over the cited references (including references cited, but not applied). Accordingly, Applicant requests withdrawal of the rejection to these claims and allowance of them at this time.

Applicant invites Examiner to contact Applicant's representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
Joseph Rustad

Date: April 5, 2006

By:

David Varn

David Varn, Agent of Record
Registration No. 53,718
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7183
Fax: (650) 938-5200
E-Mail: dvarn@fenwick.com